

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

BENICIO PENA, JR (18)

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NO. 3:12-CR-220-L

REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY

Defendant, by consent, under authority of United States v. Dees, 125 F.3d 261 (5th Cir. 1997), has appeared before me pursuant to FED. R. CRIM.P. 11, and has entered a plea of guilty to Count 1 of the superseding information. After cautioning and examining the Defendant under oath concerning each of the subjects mentioned in Rule 11, I determined that the guilty plea was knowledgeable and voluntary and that the offense charged is supported by an independent basis in fact containing each of the essential elements of such offense. I therefore recommend that the plea of guilty be accepted and that the Defendant be adjudged guilty and have sentence imposed accordingly. After being found guilty of the offense by the district judge,

- The defendant must be ordered detained pursuant to 18 U.S.C. § 3143(a)(1) unless the Court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community if released.
 - The Government does not oppose release.
 - The defendant has been compliant with the current conditions of release
 - I find by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community if released and should therefore be released under § 3142(b) or (c).
- The Government opposes release
- The defendant has not been compliant with the conditions of release.
- If the Court accepts this recommendation, this matter should be set for hearing upon the motion of the Government.

The Defendant must be ordered detained pursuant to U.S.C. § 3143(a)(2) unless – (A)(i) the Court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted, or (ii) the Government has recommended that no sentence of imprisonment be imposed, and (B) the Court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community if released.

Date: 09/03/2013



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. §636(b)(1)(B).